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UNITED STATES DISTRICT COURT**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Case No.: 2:17-cr-00042-APG-DJA

Plaintiff

Order

v.

SHAMARIAE MARSHON JONES and
EDWIN ARNOLD, JR.,

Defendants

Defendant Edwin Arnold, Jr. filed a motion under 28 U.S.C. § 2255 claiming, among other things, that his trial counsel was ineffective. ECF No. 316. Arnold further clarified his allegations of ineffective trial counsel in his reply brief. ECF No. 320.

When a defendant files a § 2255 motion, the district court “shall” grant an evidentiary hearing “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b). Rule 7 of the Rules Governing § 2255 Proceedings permits the court to “direct the parties to expand the record by submitting additional materials relating to the motion.”

After briefing and a government surreply, there is insufficient evidence to review Arnold’s ineffective assistance of counsel claim because the record does not “affirmatively manifest the [claim’s] factual or legal invalidity.” *United States v. Rodriguez*, 49 F.4th 1205, 1213 (9th Cir. 2022) (quotation omitted). Because Arnold “raises a claim which in fairness requires disclosure” of protected communications, I deem the attorney-client privilege between Arnold and his prior counsel, Thomas Ericsson, implicitly waived only for purposes of his ineffective assistance of counsel claim. *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th


1 Cir. 1992). I therefore order Mr. Ericsson to submit an affidavit responding to Arnold's
2 allegations of ineffective assistance of counsel as set forth in his petition and reply brief. And
3 because Arnold references only two pages of the proposed plea agreement, such that the
4 government was unable to discern the terms of the agreement, I order all parties to produce, in
5 their entirety, any copies of proposed plea agreements they possess.

6 I THEREFORE ORDER counsel for the United States to provide Thomas Ericsson with
7 copies of Arnold's petition (ECF No. 316), the government's response (ECF No. 319), Arnold's
8 reply and supplement (ECF Nos. 320; 321), my order denying the petition in part (ECF No. 326),
9 the government's surreply (ECF No. 330) and this order.

10 I FURTHER ORDER Mr. Ericsson to file an affidavit responding to Arnold's allegations
11 in his petition and reply **by April 21, 2025**. Additionally, by that same date, Mr. Ericsson must
12 provide Arnold and the United States with copies of any electronic or written communications in
13 his possession that document information or advice conveyed to Arnold or the government that
14 are related to the allegations of ineffective assistance of counsel in Arnold's § 2255 motion.

15 I FURTHER ORDER all parties to produce, in their entirety, any proposed plea
16 agreements they possess **by April 4, 2025**.

17 DATED this 17th day of March, 2025.

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21 ANDREW P. GORDON
22 CHIEF UNITED STATES DISTRICT JUDGE
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